DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, Judge

CACR 05-1413

OCTOBER 25, 2006

BILLY RAY HILL
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE DREW COUNTY CIRCUIT COURT
[NO. 2004-201-1]

HONORABLE SAM POPE, JUDGE

AFFIRMED

On June 3, 2005, a Drew County jury found Billy Ray Hill guilty of three counts of rape, for which he was sentenced to a total of thirty-six years in the Arkansas Department of Correction. He appeals from those convictions, arguing that the court allowed a transcript of an interview he gave to police to be entered into evidence in violation of Rule 403 of the Arkansas Rules of Evidence. We hold that any error stemming from the admission of the transcript was harmless. Therefore, we affirm.

Appellant was charged with four counts of raping his two stepdaughters, N.G. and V.G.[1] At trial, both N.G. and V.G. gave accounts of appellant abusing them since N.G. was

[1]Specifically, appellant was charged with two counts of sexual intercourse with a child less than fourteen years of age and two counts of deviate sexual activity with a child less than fourteen years of age.

four years old and V.G. was six years old.[2] During the trial, Larry Smith of the Monticello Police Department testified that during an interview with appellant, he asked appellant if he ever touched the victims in their private areas, to which appellant replied no. Smith also asked appellant if he ever touched their breasts, to which appellant replied, "I might have grabbed their breasts before you know didn't do it intentionally or anything, a hug." Smith also asked appellant how N.G. and V.G. knew that he had three testicles instead of two, to which appellant noted that he and his wife bathed and showered together and that the girls may have heard the two talk about it. Appellant stated in the interview that, "to [his] knowledge" he had not touched the girls inappropriately "in any kind of way."

During Smith's testimony, the State asked that a transcript of the interview be entered into evidence, at which time the following colloquy occurred:

> MR. CASON [PROSECUTOR]: If there's no objections, I'd ask that this be entered into evidence.
>
> MR. GIBSON [APPELLANT'S COUNSEL]: Your Honor, I think he can testify as to what it says, but I don't think the document needs to be entered into evidence.
>
> THE COURT: Well –
>
> MR. GIBSON: Any more than any other testimony should be reduced to writing.

[2]Appellant does not challenge the evidence to support the convictions; therefore, a detailed account of their testimony is not necessary. Suffice to say, both girls gave graphic testimony about the rapes.

THE COURT: The officer testified it's an accurate transcript of the tape recorded interview, as I understand it. Overrule the objection and admit the document.

The actual tape of the interview was neither played before the jury nor entered into evidence.

Appellant testified in his own defense and acknowledged that the transcript was accurate. He also noted that everyone in his family knew about his third testicle. He denied raping N.G. and V.G. Appellant also called Shirley Harlow, appellant's half-sister, who testified that all of her siblings knew about appellant's third testicle and that appellant could not have raped N.G. and V.G.

The State nolle prossed one count of raping V.G., noting that it failed to present sufficient evidence to support the charge. The jury later found appellant guilty of three counts of rape (two against N.G. and one against V.G.). The jury sentenced appellant to twelve years in the Arkansas Department of Correction on each count, with sentences to be served consecutively, for a total of thirty-six years.

Appellant argues that the trial court erroneously admitted the transcript of the interview between him and Smith. He contends that the transcript was admitted in violation of Rule 403 of the Arkansas Rules of Evidence because the admission of the transcript amounted to undue repetition and improper emphasis of the evidence.

The State contends that appellant's objection is not preserved for appellate review. Error may not be predicated upon a ruling that admits evidence unless a substantial right of the party is affected and a timely objection, stating the specific ground of the objection,

appears on the record. Ark. R. Evid. 103(a)(1). Further, a party cannot change his ground for an objection on appeal but is bound by the scope and nature of the arguments made at trial. *Rodgers v. State*, 360 Ark. 24, — S.W.3d — (2004).

Here, appellant argued that the transcript did not need to be entered into evidence any more than any other testimony should be reduced to writing. While appellant did not explicitly state that he was making a Rule 403 challenge, an argument that evidence is unnecessary in light of other evidence can only be seen as an objection based on considerations of the needless presentation of cumulative evidence. While appellant's objection could have been more specific, we reach the merits of appellant's argument.

We hold that any error that may have happened as a result of the admission of the transcript was harmless. When evidence of guilt is overwhelming and the evidentiary error is slight, this court can hold the error harmless and affirm appellant's conviction. *See Wooten v. State*, 93 Ark. App. 178, — S.W.3d — (2005). Here, appellant conceded that the statement was accurate. Further, everything in appellant's statement to the police was testified to at trial without objection. Both victims testified that appellant had been raping them since they were small children. Smith testified about appellant's response to his question about whether appellant touched their breasts.[3] Appellant, testifying in his own

[3]Appellant complains that Smith only testified to three of the questions and four of the answers in the statement; however, appellant could have cross-examined Smith and noted that he (appellant) denied any wrongdoing in the interview as well.

defense, confirmed that he had three testicles and, just as he did to the police, explicitly denied inappropriately touching the victims.

Evidence that is merely cumulative or repetitious of other evidence admitted without objection cannot be prejudicial, *Eliott v. State*, 342 Ark. 237, 27 S.W.3d 432 (2000); *Bunn v. State*, 320 Ark. 516, 898 S.W.2d 450 (1995), and we do not reverse absent a showing of prejudice. *McKeever v. State*, — Ark. —, — S.W.3d — (Oct. 5, 2006).

Affirmed.

VAUGHT and ROAF, JJ., agree.